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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Paresh L. Nagda

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EXAMINER

PLUCINSKI, JAMISUE A

ART UNIT

PAPER NUMBER

3629

MAIL DATE

DELIVERY MODE

12/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/000,121	Applicant(s) NAGDA ET AL.	
	Examiner JAMISUE A. PLUCINSKI	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-30 and 33-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-30 and 33-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/02/09 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 and 3-30 and 32-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. With respect to Claims 1 and 30: the phrase "said partner databases... send said information to said integrated exchange computer via an application program interface of said information exchange computer" is indefinite. It is unclear to the examiner how a database can send information to a computer system using an interface. A database is simply a collection of data, it is not a physical thing which has a processor that is able to "send" information to a computer system.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 3, 4-19, 26-28, 30, 33-35 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al. (5,835,716) in view of Williams et al. (6,560,509) and Theil (6,035,291).

8. With respect to Claim 1: Hunt discloses the use of an information exchange system comprising:

a. A link to a communication network coupled to a plurality of partner databases storing information related to carrier availability (Hunt discloses the use of a partner subsystem (9) with a request database, that is different from the transportation database, and which ports data to the centralized database, which stores demand specification information, See Claims 6-9, Column 4, lines 45-62).

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- b. A database (50) coupled to a communications network (10), for storing a demand entry comprising shipping demand specifications and carrier entries (Column 4, lines 27-44, Hunt discloses the database is for storing data for the carrier space listed or requested. The examiner considers the carrier space listed to be the carrier entry and the carrier space requested to be the demand entry), wherein the demand entry and carrier entry arrive through the communications network (Column 4, Lines 45-58); and
- c. A logic unit coupled to the database, for receiving a demand entries and matches demands with carrier entries (microprocessor 12, and Column 4, lines 27-44).
- d. Wherein the database and the logic unit are part of an integrated exchange computer of the information exchange system (See Reference Numeral 12 with corresponding detailed description).
- e. Hunt discloses the use of multiple databases, which maintain information regarding information regarding shipping demand or carrier information and are registered with the system (subsystem 9). Databases are simply a collection of data. Therefore who the database belongs to, is not considered to be functional to the system. With respect to the limitation "send said information to said integrated exchange computer via an application program interface of said information exchange system" this limitation is not considered to be a positive limitation of the database, but simply how the information is intended to be transferred to the system. An interface is never claimed of the system, and a database is simply a collection of data that does not have any processors which would be programmed to transfer data. Therefore is considered to be intended use of the database.

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9. Hunt however fails to disclose selecting one of a plurality of carriers, and automatically booking the selected carrier in response to the demand entry. Williams discloses the use of automatically booking a selected carrier, based on an attribute such as capacity and location, and automatically booking the carrier (See Reference numerals 612 and 622, Column 7, line 20 to Column 8, line 39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of selecting and booking a carrier of Hunt, to be automated as disclosed by Williams, because the use of known techniques of automating the selection and booking of a carrier would have been obvious to one of ordinary skill in the art. (See KSR [127 S Ct. at 1739] “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

10. Hunt and Williams disclose the use of a logic unit which selects one of the plurality of carriers, however fails to disclose the unit automatically selecting one of the plurality of carriers based on an attribute of the demand entry. Theil discloses the use of automatic carrier selection (Reference numeral 5063 with corresponding detailed description) where a carrier is automatically selected based on services needed from a list of carriers (Column 5, lines 8-41). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Hunt and Williams, to have the carrier automatically selected, as discloses by Theil, in order to allow for the most beneficial carrier to be chosen, based on criteria, that is mistake-free and less time consuming. (See Theil, Column 5).

11. With respect to Claim 3: Hunt discloses the logic unit notifies a user when a demand entry or a carrier entry is received (Column 8, lines 41-62).

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12. With respect to Claim 4: Hunt discloses the use of a subsystem (8, which forwards the demand entries to the central database). The examiner considers this subsystem to be a form of an enterprise resource planning system.

13. With respect to Claims 6-11, 17, 18, 28: Hunt discloses the use of generating reports using queries (which the examiner considers to be criterion) (Column 9, line 41 to Column 10, line 2). It should be noted that what specific information is on the reports is considered to be non-functional language, which is unrelated to the “system” claim. A system claim is drawn to the structural limitations of the system only, therefore the system would remain the same whether the reports generated contained demand information or carrier information, or were based on date ranges or time frames. The type of information that is printed on the reports is deemed non-function descriptive material. The system would remain the same no matter what information is on the reports, thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

14. With respect to Claim 12: Hunt discloses the shipping demand specification comprises a route (See Claim 1).

15. With respect to Claim 13: Hunt discloses the carrier availability information comprises carrier volume and date/time, which the examiner considers to be cargo dimension, and date of availability (See Claims 1 and 2).

16. With respect to Claim 14: Hunt discloses the processor using a RDB locator, which signals the system operator, or user, when a match has been located (Column 8, lines 53-62).

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17. With respect to Claim 15: Hunt discloses the logic unit provides a user with the ability to make capacity based arrangements (See Claim 1).
18. With respect to Claim 16: Hunt discloses the logic unit provides a user with the option to conduct a transaction over the communications network (See Claim 12, Hunt discloses sending a bill or transaction code, therefore the examiner considers this to provide a transaction).
19. With respect to Claim 19: Hunt discloses the user request is entered and therefore stored, therefore the examiner considers this to be an implied request (Claim 1, item f).
20. With respect to Claim 26: Hunt discloses the logic unit formulates the response when a new entry is received (column 8, lines 36-40).
21. With respect to Claim 27: Hunt discloses the logic unit formulates the response at a pre-determined time interval (Column 8, lines 53-56).
22. With respect to Claim 30: Hunt discloses the use of a method comprising:
 - f. Receiving a demand entry from a user comprising shipping demand specifications (See Claim 1);
 - g. Receiving a carrier entry comprising demand specifications and carrier availability and storing in a transportation database (See abstract and Reference numeral 184 with corresponding detailed description). It should be noted that the carrier entry is stored in its own transportation database, and before it is matched the information is retrieved from the database to match with the request, therefore the examiner considers this to be receiving the carrier information from a database. The type of database or what it is called is considered to be non-functional descriptive material and does not effect the steps themselves. The information is received from a database, therefore what type of

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database does not functionally affect the steps. Furthermore the information comes from multiple carriers and there is multiple subsystems, therefore first and second carrier entries are being received from different databases;

h. Together the matched demand and carrier entry are stored in a transaction database (Column 4, lines 26-44);

i. Wherein the database and the logic unit are part of an integrated exchange computer of the information exchange system (See Reference Numeral 12 with corresponding detailed description).

j. Hunt discloses the use of multiple databases, which maintain information regarding information regarding shipping demand or carrier information and are registered with the system (subsystem 9). Databases are simply a collection of data. Therefore who the database belongs to, is not considered to be functional to the system. With respect to the limitation "send said information to said integrated exchange computer via an application program interface of said information exchange system" this limitation is not considered to be a positive limitation of the database, but simply how the information is intended to be transferred to the system. An interface is never claimed of the system, and a database is simply a collection of data that does not have any processors which would be programmed to transfer data. Therefore is considered to be intended use of the database.

23. Hunt however fails to disclose selecting one of a plurality of carriers, and automatically booking the selected carrier in response to the demand entry. Williams discloses the use of automatically booking a selected carrier, based on an attribute such as capacity and location, and

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automatically booking the carrier (See Reference numerals 612 and 622, Column 7, line 20 to Column 8, line 39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of selecting and booking a carrier of Hunt, to be automated as disclosed by Williams, because the use of known techniques of automating the selection and booking of a carrier would have been obvious to one of ordinary skill in the art. (See KSR [127 S Ct. at 1739] “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

24. Hunt and Williams disclose a method which selects one of the plurality of carriers, however fails to disclose the unit automatically selecting one of the plurality of carriers based on an attribute of the demand entry. Theil discloses the use of automatic carrier selection (Reference numeral 5063 with corresponding detailed description) where a carrier is automatically selected based on services needed from a list of carriers (Column 5, lines 8-41). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Hunt and Williams, to have the carrier automatically selected, as discloses by Theil, in order to allow for the most beneficial carrier to be chosen, based on criteria, that is mistake-free and less time consuming. (See Theil, Column 5)

25. With respect to Claim 33: Hunt discloses the use of a subsystem (8, which forwards the demand entries to the central database). The examiner considers this subsystem to be a form of an enterprise resource planning system.

26. With respect to Claim 35: Hunt discloses the processor using a RDB locator, which signals the system operator, or user, when a match has been located (Column 8, lines 53-62).

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27. With respect to Claim 37: Hunt discloses providing a user with a match of the demand and carrier specifications (Column 4, lines 45-58).

28. With respect to Claim 38: Hunt discloses the use of requests parameters, which the examiner considers to be a form of criterion (Column 8, lines 36-40).

29. With respect to Claim 39: Hunt discloses the shipping demand specification comprises a route (See Claim 1). And the carrier availability information comprises carrier volume and date/time, which the examiner considers to be cargo dimension, and date of availability (See Claims 1 and 2).

30. With respect to Claims 5 and 34: Hunt, as disclosed above for Claims 1 and 30, fails to disclose the logic unit allows a user to define a subgroup within the exchange system, and assign unrestricted access to only members of the subgroup. The examiner takes official notice that the use of defining a group who has unrestricted access to the system is old and well known in the art. Each computer system/network has a group of users, which have administrative rights. Administrative rights on the system or network gives a user unrestricted access to data as well as to the system itself. This is done on any Windows ® network product, such as Windows NT ®. Therefore it would have been old to one having ordinary skill in the art at the time the invention was made, to have the system of Hunt, allow a subgroup of users be assigned administrative rights, to have unrestricted access to the system, in order for the subgroup of people to have complete control over the data, for configuration purposes, and for problem solving purposes.

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31. Claims 20-25, 29, 36 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al. (5,835,716) and Williams (6,560,509) and further in view of Nel (US 2003/0036935).

32. With respect to Claims 20 and 40: Hunt and Williams, as disclosed above for Claims 1 and 30, fails to disclose the use of a fleet monitoring system which monitors vehicles. Nel discloses the use of an allocating system for freight haulage jobs, which has a fleet monitoring system which uses GPS to locate vehicles (See Figure 1, satellites 30 and 32 with corresponding detailed description). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Hunt, to include a fleet monitoring system of Nel, in order to fill excess capacity of a vehicle, at any time during their transportation. (See Nel, abstract)

33. With respect to Claim 21: Nel discloses the logic unit alerts a delivery vehicle when a new demand entry matches a location of the delivery vehicle as determined by the fleet monitoring system (Paragraph 0026 and 0039).

34. With respect to Claim 22: Nel discloses that each of the delivery vehicles contains a GPS unit and a wireless modem that transmits location data for each of the delivery vehicles to the fleet monitoring system (Paragraphs 0027 and 0028).

35. With respect to Claim 23: Nel discloses the wireless modem provides an internet connection to the fleet monitoring system (Paragraphs 0029 and 0030).

36. With respect to Claim 24: Nel discloses the delivery vehicle contains a portal allowing a driver to see demands from the database (Paragraph 0027-0029, Nel discloses each vehicle has a mobile communications unit which accesses job allocation services provided by the job manager,

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therefore the examiner considering this to be a portal, which is fully capable of allowing a driver to view demand entries).

37. With respect to Claim 25: Nel discloses the GPS and wireless modem automatically transmits location data for the delivery vehicles to the fleet monitoring system and the logic unit uses the location data in determining whether to send an alert to the delivery vehicle (Paragraphs 0015 and 0026).

38. With respect to Claims 29 and 36: Nel, discloses for each vehicle, the rates are given in the carrier specification (Paragraph 0037) and the matching of demands and carriers are based on bid prices as well as rates (Paragraphs 0006, 0045 and 0047)

39. With respect to Claim 41: Nel discloses alerting a delivery vehicle when the location of the delivery vehicles matches a parameter of a demand entry (Paragraphs 0032-0039).

40. With respect to Claim 42: Nel discloses the delivery vehicles comprise a location determining unit and a wireless connected to a communications network (Paragraphs 0029 and 0030).

Response to Arguments

41. Applicant's arguments filed 12/2/09 have been fully considered but they are not persuasive.

42. With respect to Applicant's Argument in terms of Claim 1 and Hunt not disclosing partner databases: The applicant is arguing the rejections based on the newly amended claims. A database is simply a collection of information, therefore who owns the database or what information is within a database, does not get patentable weight until the claims give

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functionality to them. For a system, a computer has to be configured to utilize the specific information in a specific way, and for the term partner to be functional, the database must reside on a partner computer, which again has functionality which would set it apart from the main computer. For a method, there must be specific manipulation steps which utilize the specific information in a specific way, as well as functional differently because it is a different, separate or partner database. A database can have any name, it is not until the functionality of the information or the name becomes positively claimed that it is given patentable weight and not considered non-functional descriptive.

43. With respect to Applicant's arguments that the examiner has unsupported Official Notice. The applicant is challenging the official notice by simply stating that the office action has inappropriately taken official notice of the technical facts. The MPEP states that the challenge is not enough, the applicant must state that the facts the examiner is taking office notice of being old and well known in the art are in fact not old and well known in the art. As stated in the previous response. The examiner took official notice that the use of defining a group who has unrestricted access to the system is old and well known to the art. This is not an assertion of technical fact in an area of esoteric technology nor is it specific knowledge of a prior art reference. It is the examiner stating that given a set of users unrestricted access to a computer system is old and well known in the art, and even gave specific examples of when this is the case, which is outlined in the MPEP 2144.03, as being appropriate for fact asserted to be well-known or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. It goes on to state that the examiner must set forth specific factual findings predicated on sound technical reasoning and scientific reasoning to support his

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or her conclusion of common knowledge. The examiner has provided support and reasoning for the finding as outlined above. Furthermore, the applicant has argued that Official Notice incorrectly stating that it is unsupported, the applicant has not stated that what the examiner has stated is old and well known in the art (defining a group who has unrestricted access to a system) is not in fact old and well known. The applicant has not challenged the Official Notice Properly as outlined in 2144.03 (C.) and therefore the argument is not persuasive and the rejection stands as stated above.

44. The arguments are not considered to be persuasive and the rejection stands as stated above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMISUE A. PLUCINSKI whose telephone number is (571)272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jamisue A. Plucinski/
Primary Examiner, Art Unit 3629